

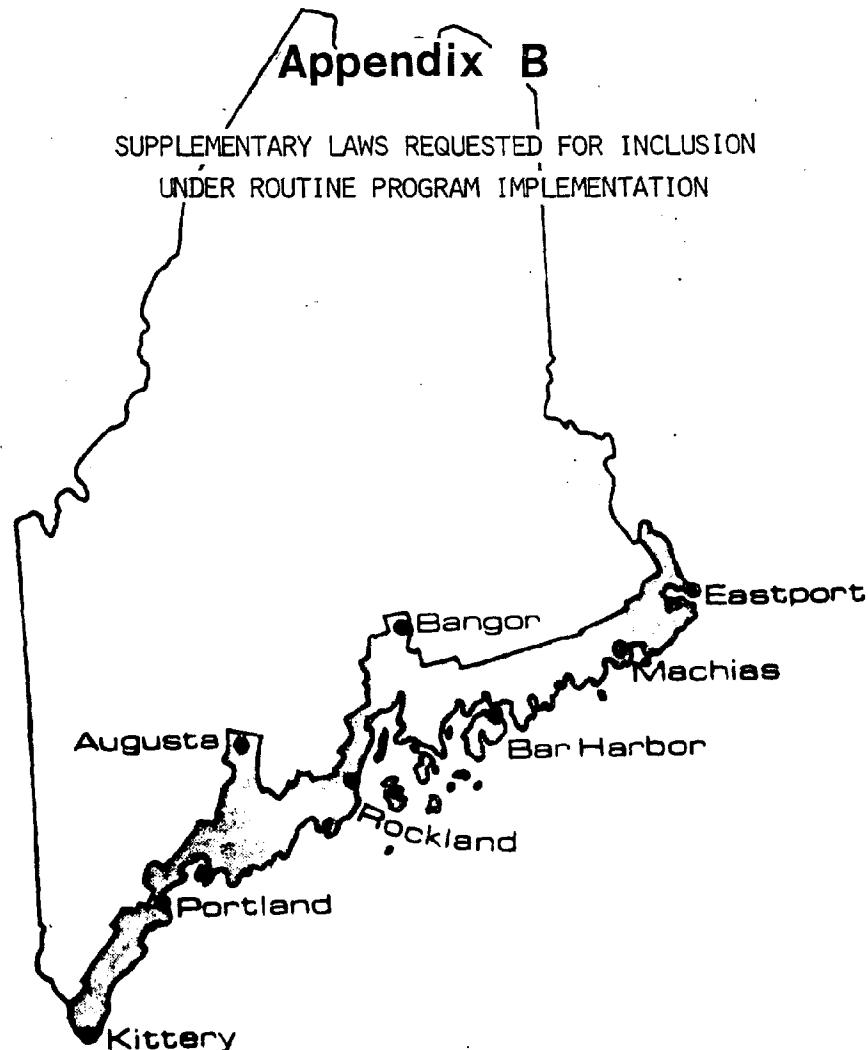
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A Report on Requested Changes to Maine's Coastal Program

KFM 451.8 A4 R4 1984 Appendix B

Appendix B

SUPPLEMENTARY LAWS REQUESTED FOR INCLUSION
UNDER ROUTINE PROGRAM IMPLEMENTATION



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APPENDIX B

SUPPLEMENTARY LAWS REQUESTED FOR INCLUSION
UNDER ROUTINE PROGRAM IMPLEMENTATION

Item #

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Aquaculture Leases, 12 MRSA 6072-6074
Fishways, 12 MRSA 6121-6122
Lobster Conservation, 12 MRSA 6431-6440
Salmon, 12 MRSA, 6553-6554
Herring, 12 MRSA 6542 and 32 MRSA 4159
Gear Limitation, 12 MRSA 6571
Shellfish, 12 MRSA 6621
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13 Maine Waterway Development and Conservation Act (Title 38, Sections 630-636)

14 Maine Rivers Act (12 MRSA 403) -- section designating certain river segments on which no new dams are to be constructed without the specific authorization of the Legislature.

15 Submerged & Intertidal Lands (12 MRSA 558-A)

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MARINE RESOURCES LAWS
CONCERNING FISHERIES CONSERVATION

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MARINE RESOURCES LAWS CONCERNING FISHERIES CONSERVATION

AQUACULTURE LEASES (Title 12, Sections 6072-6074)

§ 6072. Research and aquaculture leases

1. Authority. The commissioner may lease areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section shall be exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner.

2. Limitations of lease. The commissioner shall determine the provisions of each lease, provided:

A. A lease shall not exceed a term of 10 years;

B. A lease may be granted for tracts not to exceed 5 acres in area. The commissioner may grant contiguous lease tracts to a single applicant; and

C. No applicant shall be permitted to lease more than 200 acres.

D.

3. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not lease more than 2 acres of the intertidal zone within the municipality without the consent of the municipal officers.

4. Applications. The application shall:

- A. Be written on forms supplied by the commissioner;
- B. Describe the location of the proposed lease tract by coordinates or metes and bounds;
- C. Identify the species to be cultivated;
- D. Describe the impact of the project on existing or potential uses of the area;

E. Describe the degree of exclusive use required by the project;

F. Include written permission of every riparian owner whose land to the low water mark will be actually used; and

G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners.

5. Application review. The commissioner shall review the application and set a hearing date if he is satisfied that the written application is complete and the application indicates that the lease could be granted.

6. Hearing procedure. Prior to granting a lease, the commissioner shall hold a hearing. The hearing shall be an adjudicatory proceeding and shall be held in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV and the specific procedures of this section.

A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing shall be required to be given only to the lessee and the known riparian owners.

B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public.

7. Decision. The commissioner may grant the lease, if he is satisfied that the proposed project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area and is not in conflict with applicable coastal zoning statutes or ordinances. The commissioner may establish conditions that govern the use of the leased area and the limitations on the greatest multiple, compatible uses of the leased area, but shall also preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.

8. Preference. If more than one person applies to lease an area, preference shall be given as follows:

- A. First, to the department;
- B. Second, to the riparian owner of the intertidal zone

within the leased area;

- C. Third, to fishermen who have traditionally fished in or near the proposed lease area; and
- D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

9. Rents. After consulting with the Director of the Bureau of Public Lands, the commissioner shall determine the rent which shall be paid under each lease. The rent shall represent a fair value based upon the use of the leased area.

10. Lessee's actions. After being granted a lease, each lessee shall:

- A. Record the lease in the registry of deeds of each county in which the leased area is located;
- B. Publish a notice in the newspaper in which the commissioner published notice or would have published notice of any public hearing. The notice shall describe the area leased and enumerate any restriction in the leased area; and
- C. Mark the leased area in a manner prescribed by the commissioner.

11. Revocation. If substantially no research or aquaculture has been conducted within the preceding year, or if it has been conducted in a manner substantially injurious to marine organisms, or if any other condition of the lease has been violated, the commissioner may revoke the lease. A lease revocation shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A hearing with public notice shall be held prior to revoking any lease.

12. Renewal. The commissioner shall grant a lease renewal unless the prior lessee has not complied with the lease agreement during its term, substantially no research or aquaculture has been conducted, or the commissioner finds that it is not in the best interest of the State to renew the lease. Renewals may be granted if applied for no later than 30 days after the lapse of the prior lease. A lease renewal shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Public notice shall be given as required under subsection 6 of this section

and a hearing shall be held if it is requested by an interested person.

12-A. Transferability. A lease may be transferred to another person for the remaining portion of its term subject to the following conditions.

A. Lease transfers shall be subject to the same procedural requirements as initial applications, except that a public hearing is not mandatory unless requested by an interested person.

B. The commissioner may grant lease transfers if he determines that:

(1) The change in lessee does not violate any of the standards in subsection 7;

(2) The transfer is not intended to circumvent the intent of subsection 8; and

(3) The transfer is not for speculative purposes.

13. Regulations. The commissioner may adopt or amend regulations:

A. Establishing minimum standards for maintaining leases;

B. For procedures to issue, transfer, review or revoke leases; and

C. For notices and hearings to the extent that those procedures are not established by this section or the Maine Administrative Procedure Act, Title 5, chapter 375.

14. Conflicts. Whenever a project described in a pending aquaculture lease conflicts or could conflict with a project described in a pending submerged lands act lease, the commissioner and the Commissioner of Conservation shall determine which project is in the best interests of the State.

§ 6073. Exclusivity, prohibition or interference

1. Exclusivity. Each lease for aquaculture shall be exclusive for the species and to the extent provided by the commissioner in the lease.

2. Prohibition on interference. It shall be unlawful to interfere with the rights provided in a lease.

§ 6074. Special license

The commissioner may, with the advice and consent of the advisory council, issue a special license for research, aquaculture or education, which exempts the holder from one or more marine resources laws as to the time, place, length, condition, amount and manner of taking or possessing any marine organism.

1. Exception. A special license shall not permit the holder to sell or, beyond the state limits, to ship or transport any marine organism that is less than the minimum size established by statute. This subsection shall not apply to:

A. Pacific salmon.

2. Application. The application shall include a description of the proposed project including the objectives, the location and the estimated time of completion of the project. The application shall also include a list of the sections of law or regulation for which exemptions are required, and the specific reasons for each requested exemption.

3. Filing fee. Each application shall include a nonrefundable filing fee of \$50. The fee may be waived for research activity by institutions or organizations financed in whole or part by state funding. No filing fee may be required for applying for a special license for raising and selling Pacific salmon. No filing fee may be required from a municipality applying for a special license for using a hydraulic dredge under section 6623.

4. Limitation. The special license shall authorize only the individual named in the license to undertake the licensed activities. Any individual engaged in handling or harvesting marine organisms in the licensed project shall be listed on the license or supplemental license. The commissioner may, at any time, place conditions or limitations on the licensed activities which shall become part of the license.

5. Fees. The annual fee for a special license shall be \$25. An annual fee of \$10 shall be paid for each individual after the first individual. No license fee may be required for a special license for raising and selling Pacific salmon.

No license fee may be required from a municipality for a special license for using a hydraulic dredge under section 6623.

6. Renewal.

A. The initial issuance of each special license shall specify the number of times the license may be renewed after the initial issuance. Each license may be renewed at least 4 times. The commissioner, with the advice and consent of the advisory council, may authorize up to 19 renewals, if the necessary investment in the research or aquaculture requires additional renewals.

B. The commissioner shall annually renew the license on request for the authorized number of renewals, unless the licensee holder has not complied with the conditions of the license, or the commissioner finds that renewal is not in the best interest of the State. Renewals shall not require a new application nor filing fee and shall not require the advice and consent of the advisory council.

7. Transportation permit. A transportation permit shall be required for a special license holder to ship, transport or sell any marine organism raised or harvested under a special license. The commissioner may place conditions or limitations on the activities authorized by this Permit to the extent necessary to provide proper controls and to comply with federal or state health or sanitation standards. The commissioner shall annually renew the permit on request unless the permit holder has not complied with the conditions of the permit or unless the permit holder no longer holds a special license.

agraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052, and the following requirements:

FISHWAYS (Title 12, Sections 6121-6122)

§6121. Fishways in existing dams or artificial obstructions

1. Commissioner's authority. In order to conserve, develop or restore anadromous fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other artificial obstruction within coastal waters frequented by alewives, shad, salmon, sturgeon or other anadromous fish species.

2. Examination of dams. The commissioner shall periodically examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous fish.

3. Initiation of fishway proceedings. The commissioner shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever he determines that either of the following conditions may exist:

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous fish; or

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.

4. Adjudicatory proceedings.

A. A fishway proceeding shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, but a hearing may not be required unless requested in accordance with par-

agraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052, and the following requirements:

(1) Personal notice shall be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and of his right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected, notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing.

B. If any interested person requests a public hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons, or schedule a public hearing. The commissioner shall

(1) He is petitioned by 50 or more Maine residents; or

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing.

C. The commissioner shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.

5. Decision. In the event the commissioner decides that a fishway should be constructed, repaired, altered or maintained, his final orders shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The commissioner may issue a decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a decision shall be supported by a finding

A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway, and habitat anywhere in the watershed above the

dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period immediately subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

6. Compliance:

A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to the commissioner's decision.

7. Privileged entry: The commissioner, his agents or subcontractors shall be privileged to enter upon any private land in order to periodically examine fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other per-

son in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

§6122. Construction of new dams or other artificial obstructions

1. Notice required. Prior to construction or prior to authorizing construction of a new dam or other obstruction in the coastal waters, the owner, lessee or other person in control of the dam or other artificial obstruction shall provide written notice to the commissioner, supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.
2. Initiation of fishway proceedings. Within 30 days of receipt of the construction notice, the commissioner shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 6121, subsection 3. If the commissioner determines that such construction or alteration may be necessary, he shall initiate fishway proceedings and follow the procedures prescribed in section 6121.

LOBSTER CONSERVATION (Title 12, Sections 6431-6440)

section shall be a Class D crime, except that the court shall impose a fine of \$25 for each violation and, in addition, a fine of \$10 for each lobster involved, up to and including the first 5, and a fine of \$20 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not more than \$1,000.

§ 6431. Lobster measurement

1. Minimum and maximum length. It shall be unlawful to buy, sell, give away, transport, ship or possess any lobster which is less than 3 3/16 inches or more than 5 inches in length, as determined by the state double gauge lobster measure.

2. Method of measurement. Measurement shall be made from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

3. Double gauge measure; evidentiary value. The department shall provide the state double gauge lobster measure for sale at actual cost. The measure shall have one gauge of 3 3/16 inches and another 5 inches in length. No measure, other than by the state's double gauge lobster measure, shall be admissible in any court in the State.

4. Mutilation. It shall be unlawful to possess any lobster, or part thereof, which is mutilated in a manner which makes accurate measurement impossible.

5. Exception for immediate liberation. No violation of this section shall occur if the illegal lobster is immediately liberated alive into the coastal waters when taken.

6. Exception for wholesale dealer in certain instances. Authority for regulations. This section shall not apply to lobsters reconsigned intact in the original crates by a holder of a wholesale seafood license to another licensee holder if the crates are sealed in accordance with regulations adopted by the commissioner. The commissioner may adopt or amend regulations to prescribe the time, manner and method of sealing crates for the effective operation of this subsection. The regulations may contain provisions for inspection of the crates, contents and seals.

7. Penalty. Possession of lobsters in violation of this

§ 6432. Methods of fishing

1. Conventional traps. It shall be unlawful to fish for or take lobster by any method other than conventional lobster traps.

2. Marking. It shall be unlawful to set, raise, lift or transfer any lobster trap or buoy unless it is clearly marked with the owner's lobster and crab fishing license number.

3. Color design. It shall be unlawful to set, raise, lift or transfer any lobster trap unless the color design of the attached buoy is the same as the color design that is on file with the license application and is displayed on the boat, or unless the person is duly licensed and possesses written permission from the rightful owner of the lobster trap or buoy. Prior notification of changes in buoy color design shall be provided to the commissioner.

4. Design display. The buoy color design shall be displayed on the boat as follows:

A. On both sides of the hull or on a panel painted on both sides and attached to the boat's forward topside in a manner so as to be clearly visible on both sides of the boat. Each color shall appear as a solid color strip 4 inches high and 18 inches long abutting another color on its longest side to form a rectangle with a one-inch black border on all sides; or

B. A buoy of at least 12 inches long, mounted in a manner so that the color design is clearly visible on both sides of the boat.

§ 6433. Escape vents

1. Vent required. It shall be unlawful to fish for or to take lobsters unless the lobster trap is equipped with unobstructed vents or gaps in the parlor section which are:

A. A rectangular or oblong escape vent not less than 1 3/4 inches (44.5 mm.) by 6 inches (152.5 mm.) located

1/2c'

next to the bottom edge;

B. Two circular escape vents not less than 2 1/4 inches (57.2 mm.) in diameter located next to the bottom edge;

C. A gap caused by raising, modifying or separating horizontal laths to comply with paragraph A or B;

D. A gap caused by separating or modifying vertical laths to comply with paragraph A;

E. A gap caused by separating both ends of 2 laths 1 3/4 inches (44.5 mm.) on the top of the parlor section next to the middle bow or supporting frame and directly over the parlor head; or

F. In a wire or plastic trap by a gap created by cutting vents in the side or end to comply with paragraph A or B.

2. Action prohibited. It shall be unlawful to set, raise, haul or transfer any lobster trap unless the trap is equipped with an escape vent as required in this section or has been exempted under subsection 3.

3. Exemption. The commissioner may exempt specific trap designs from the escape vent requirements of this section if it is proved to his satisfaction that the specific trap design will only take crabs and is incapable of taking lobsters.

4. § 6434. Molesting gear

It shall be unlawful for any person, except a coastal warden, the licensed owner or a person having written permission from the licensed owner, to raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car.

5. § 6435. Setting near weirs

It shall be unlawful to set any lobster trap within 300 feet of the mouth of any fish weir when the weir owner or operator is licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

6. § 6436. Egg-bearing lobsters; v-notched lobsters

1. Egg-bearing and v-notched lobsters. It shall be unlawful to take, transport, sell or possess any lobster which is bearing eggs or any female lobster marked with a v-notch in the right flipper next to the middle flipper or any female lobster which is mutilated in a manner which could hide or obliterate that mark. The right flipper shall be determined when the underside of the lobster is down and its tail is toward the person making the determination.

2. Exceptions. No violation of this section shall occur if:

- A. The lobster is immediately liberated alive into the coastal waters when taken or discovered in a pound; or
- B. The lobster is possessed and sold to the department by a Lobster Pound owner who has a permit to do so as provided in this section.

3. Permitted possession regulations. The commissioner may issue a permit for the holding and delivery of egg-bearing lobsters to the department by a Lobster pound owner who holds a current wholesale seafood license. The commissioner may adopt regulations governing the issuing of permits and the conditions and limitations under which these lobsters may be held and delivered.

4. Prima facie evidence.

A. Discovery of an egg-bearing lobster by a coastal warden in a pound not included in a permit under section 3 shall be prima facie evidence of a violation.

B. Any lobster whose right flipper is v-notched or mutilated in a manner which could hide or obliterate such a mark shall be prima facie evidence that the lobster is a v-notched female lobster.

5. Penalty. Possession of lobsters in violation of this section is a Class D crime, except that in addition to any punishment which may be imposed under Title 17-A, Part 3, the court shall impose a fine of \$25 for each violation and, in addition, a fine of \$30 for each lobster involved.

§ 6437. Scrubbing lobsters

1. Prohibition. It shall be unlawful to remove extruded eggs from any female lobster.
2. Penalty. A violation of this section shall be a

Class D crime, except that the court shall impose a fine of \$100 for each lobster.

§ 6438. Scrubbed lobsters

1. Prohibition. It shall be unlawful to take, buy, sell, possess, transport or ship any female lobster from extruded eggs have been removed by any means other than natural hatching.

2. Penalty. A violation of this section shall be a Class D crime, except that the court shall impose a fine of \$100 for each lobster.

§ 6439. Areas of limited lobster fishing.

It shall be unlawful to have on any trawl more than 3 lobster traps in any of the coastal waters in the following areas:

1. West of Cape Elizabeth and east of Kittery. Westerly of a line drawn from the active lighthouse at Two Lights in Cape Elizabeth to the Rue and Cry Buoy, and northerly and easterly of a line running between the Kitts Rocks Whistle Buoy and the West Sister Buoy and extending westerly to the New Hampshire border, and from the West Sister Buoy to the Murray Rock Buoy and thence to and through the lighthouse on Boone Island and, continuing in a straight line, to the boundary of the coastal waters within the jurisdiction of this State. Each trawl set in this area shall be marked with at least one buoy with a buoy stick of at least 4 feet in length.

§ 6440. Closed Periods

It shall be unlawful to raise, haul or transfer any lobster trap from the coastal waters:

1. Summer. During the period 1/2 hour after sunset until 1/2 hour before sunrise from June 1st to October 31st, both days inclusive; and

2. Weekends. During the period from 4 P.m., Eastern Daylight Savings Time Saturday, to 1/2 hour before sunrise the following Monday morning from June 1st to August 31st, both days inclusive.

2. Between Pemaquid and Robinson's Points. Between the following lines:

A. Beginning at a point 48 miles true north of the lighthouse on Pemaquid Point, Lincoln County; thence true south through the lighthouse to a point where that line intersects the southeasterly boundary of the coastal waters within the jurisdiction of the State; and

B. Beginning at a point 40 miles true north from the lighthouse at Robinson's Point, Isle au Haut, Knox County; thence true south through the lighthouse to a point where that line intersects the southeasterly boundary of the coastal waters within the jurisdiction of the State; and

3. Off Hancock County. Within the following radio direction-finder LORAN C bearings: Beginning at Schoodic Point, Hancock County; thence running a True compass course

§ 6553-A. Implements and devices in Washington County Waters

SALMON (Title 12, Sections 6553-6554)

§ 6553. Atlantic salmon; limits; method of taking; closed season

1. Minimum length. It shall be unlawful to take or possess Atlantic salmon which are less than 14 inches in length.

2. Method of taking. From July 16th to October 15th, both days inclusive, it shall be unlawful to take Atlantic salmon from the coastal waters by means other than hook and line with a single hook.

3. Closed season. From October 16th to March 31st, both days inclusive, it shall be unlawful to take Atlantic salmon from the coastal waters by any means.

4. Exception on the St. Croix River. Except from May 15th to August 31st, both days inclusive, Atlantic salmon may be taken in weirs on the St. Croix River below the breakwater at the ledge.

5. Bag limit. It shall be unlawful to take more than one Atlantic salmon in one day, or to possess more than 2 Atlantic salmon. This subsection is repealed on December 31, 1981.

6. Bag limit. It is unlawful to take more than one Atlantic salmon in one day from inland waters or coastal waters designated in section 6255, subsection 2.

Between May 1st and December 1st of each year, it shall be unlawful to set or use any device, such as fish spawn, gill net, spear, trap, gaff, seine, gill net, trap or set line on the waters of the Pleasant River and its tributaries in Columbia Falls and Addison in Washington County, above Maine River Bridge, so-called, in Addison, and during that closed period no person may have in his possession any gill net, trap, gill net, trap or set line on the Pleasant River or its tributaries within those boundaries. This section does not apply to the taking of eels by spear from those waters during the month of November annually. This section does not apply to the taking of alewives from those waters as authorized by the general law or by vote of the Town of Columbia Falls. Any equipment used in violation of this section shall be confiscated by the commissioner, after final adjudication of any charge brought under this section.

§ 6554. Pacific salmon; method of taking; limits

1. Minimum length. It shall be unlawful to take or possess Pacific salmon which are less than 14 inches in length.

2. Method of taking. It shall be unlawful to fish for or take Pacific salmon from the coastal waters by any means other than hook and line with a single hook.

3. Limits. No more than 2 Pacific salmon may be taken in any one day.

4. Exception for aquaculture. A person lawfully engaged in the aquaculture of Pacific salmon shall be exempt from this section provided that that person holds a special license, if required, under section 6074.

5. Recommendations; commissioner. Nothing in this chapter may prohibit the commissioner from recommending to the Legislature changes in the limit on Pacific salmon that may be taken by hook and line with a single hook.

HERRING (Title 12, Section 6542; Title 32, Section 4159)

GEAR LIMITATION (Title 12, Section 6571)

TITLE 12

§ 6542. size of herring

It shall be unlawful to take, buy, sell, process, ship, transport or possess herring which are less than 4 1/2 inches in length, except:

1. Bait.

2. Tolerance of 25%. Any person may take, buy, sell, process, ship, transport or possess herring that are less than 4 1/2 inches, if they comprise less than 25% by volume of an entire lot. The 25% tolerance by volume shall be determined by examination of 1/12 bushel chosen at random from each 30 hogsheads of herring or fraction thereof.

TITLE 32

§ 4159. Sale or packing of herring

It shall be unlawful for any person, firm or corporation to sell, offer for sale or transfer in any manner herring which are 4 1/2 inches in length or longer when measured from one extreme to the other to any person, firm or corporation, other than for human consumption or bait purposes, unless such herring are not desirable for processing for human consumption; Provided there is a buyer of herring for processing for human consumption within a reasonable distance of the place where such herring are caught and available at the time they are offered for sale, ready and willing to purchase at a price acceptable to the seller. No person, firm or corporation shall can, pack or otherwise process such herring except for human consumption except as provided in this section.

1. Tolerance of 25%. how determined. Any person, firm or corporation may take, sell, purchase, process, ship, transport or have possession of herring which are between 4 1/2 and 9 inches in length when they are mixed with herring of greater length, provided the herring between 4 1/2 and 9 inches in length comprise less than 25% of the entire lot.

A. The tolerance of 25% is determined by volume of 1/2 bushel of herring for each 30 hogsheads of herring, or fraction thereof, taken at random from various parts of the lot.

SHELLFISH (Title 12, Section 6621)

MUNICIPAL CONSERVATION PROGRAMS (Title 12, Section 6671, 6673)

§ 6621. Closed areas

1. Taking from closed areas. It shall be unlawful to fish for or take shellfish from any area closed by regulation or to possess, ship, transport or sell shellfish so taken.

2. Washing or holding in closed areas. It shall be unlawful to wash, hold or keep shellfish in any area closed by regulation or to possess, ship, transport or sell shellfish so washed, held or kept.

3. Exception. This section shall not apply to:

A. The taking of shellfish under the authority of section 6856; or

B. Shellfish kept or washed in waters sterilized with a system that has been approved in writing by the commissioner, provided that the waters are also approved for that use.

§ 6671. Municipal shellfish conservation programs

1. Municipal funds. Any municipality may, by vote of its legislative body, raise and appropriate money for the implementation of a shellfish conservation program.

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance regulating the possession of shellfish in any area of the municipality as provided by this section.

3. Shellfish conservation ordinance. Within any area of the municipality, a shellfish conservation ordinance may regulate or prohibit the possession of shellfish; may fix the amount of shellfish that may be taken; shall limit the size of soft-shell clams in accordance with subchapter I, Article 5; may fix the qualifications for a license, including municipal residency; may fix license fees; and may authorize the municipal officers to open and close flats under specified conditions. A program or ordinance shall not regulate areas closed by regulation of the commissioner. An ordinance may also provide for enforcement, protection and evaluation of a green crab fencing program.

No municipal commercial license may be issued unless the applicant has a current shellfish license, as provided in section 6601. The fee for a nonresident license shall be not more than 10 times the fee for a resident licensee. Provided that in no case may the fee for a nonresident license exceed \$150. Notice of the number and the procedure for application shall be published in a trade or industry publication which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. Subsequent to that period, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

4. Adoption requirements. Prior to adopting an ordinance under this section, the municipality shall:

- A. Raise or appropriate money for a shellfish conservation program within the 2 previous years; and
- B. Receive and file with the municipal clerk the proposed program and ordinance.

4-A. State parks. The commissioner shall consult with the Commissioner of Conservation in review of any municipal ordinance that affects intertidal areas located within state parks. The commissioner may not approve any ordinance that threatens any important resources or provides insufficient opportunity for recreational shellfish harvesting within state parks.

5. Period of ordinance. Ordinances adopted under this section shall remain in effect for no more than 3 years. A certified copy of the ordinance shall be filed with the commissioner within 20 days of its adoption.

6. Municipality defined. For the purposes of this section, municipality includes:

- A. Village corporations;
- B. The combined towns of Yarmouth and North Yarmouth; and
- C. An unorganized township in which at least 10 residents have petitioned the county commissioners to adopt a clam conservation ordinance and in which the county commissioners have held a public hearing with at least 7 days prior notice. The hearing shall be held in the unorganized township. The county commissioners shall act as the municipal legislative body within an unorganized township that has petitioned to adopt ordinances under this section.

7. Joint programs; reciprocal privileges. Municipalities may enter into joint conservation agreements with other municipalities and adopt joint programs. The agreements and ordinances adopted under them, shall be subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a joint agreement may be extended to the residents of other municipalities in the agreement.

8. Local enforcement. The following provisions shall apply to enforcement.

A. A municipality that enacts an ordinance under this section shall be responsible for enforcing it.

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this Article shall, within one year of appointment, be certified by the commissioner. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement, and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The commissioner may establish by rule procedures for certification and for revocation of certification. A certificate may be revoked for failure of the warden to comply with the performance standards established by the commissioner.

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing him and may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden shall also have, within his jurisdiction, the powers of a marine patrol officer provided in section 605, subsection 4. All of the powers conferred in this subsection shall be limited to the enforcement of a municipal shellfish conservation ordinance.

9. Penalty. Notwithstanding the provisions of Title 17-A, section 4-A, whoever takes or possesses shellfish contrary to a municipal ordinance authorized by this section shall be guilty of a crime punishable by a fine of not less than \$100 nor more than \$1,000, except that fines for violation of subchapter I, Article 5, shall be as provided in section 6681.

§ 6673. Municipal leasing of flats

A municipality, which has established a shellfish conservation program as provided under section 6671, may lease areas in the intertidal zone to the extreme low water mark, within the municipality for the purpose of shellfish aquaculture.

1. Municipal procedure. A written application may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best interests of the municipality. On approval, the lease shall be forwarded to the commissioner.

2. Department procedure for review and approval. The commissioner shall use the same procedure and the same grounds for approval as required for aquaculture leases under section 6072, except:

A. Preference shall be given to municipal leases;

- B. No rent shall be set, but there shall be an annual municipal lease fee of not less than \$1 per acre;
- C. The municipality may establish the conditions and limits on the lease; and
- D. The advice and consent of the advisory council shall not be required.

SCALLOPS (Title 12, Sections 6721-6725)

§ 6721. Minimum size

1. Minimum size. It shall be unlawful to take, possess, ship, transport, buy or sell scallops whose shells are less than 3 inches in the longest diameter.

2. Tolerance of 10%. Any person may take, possess, ship, transport, buy or sell scallops that are less than 3 inches if they comprise less than 10% of any bulk pile. The 10% tolerance shall be determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

§ 6722. Closed areas

Unless modified by regulation adopted under section 6171-A, it is unlawful to fish for or take scallops in the coastal waters from April 16th to October 31st, both days inclusive.

It is unlawful to fish for or take scallops in the coastal waters from April 16th to October 31st, both days inclusive.

§ 6723. Drag limits in Blue Hill Bay

It is unlawful to fish for or take scallops with any one combination of scallop drags in excess of 8 feet, 6 inches in width by measuring from the extreme outside edge of the mouth of the drag or drags, in Blue Hill Bay above or north of a line drawn from Bass Harbor Head in the Town of Tremont westerly to Pond Island and thence to Naskeag Point in the Town of Brooklin.

§ 6724. Otter trawl in Penobscot River

It shall be unlawful to fish for or take scallops by use of an otter trawl inside and upriver of a line drawn from the lighthouse on Dice Head, Castine to Turtle Head on Islesboro and thence to the town wharf at Bayside, Northport.

§ 6725. Possession of illegal scallops

It shall be unlawful to possess, ship, transport, buy or sell scallops taken in violation of this subchapter.

METHODS OF FISHING (Title 12, Sections 6951-6952)

§ 6951. Fishing with dynamite or poison

It shall be unlawful to:

1. Use dynamite or poison. Use dynamite or any poisonous or stupefying substance for the purpose of destroying or taking fish in the coastal waters;
2. Possess dynamite or poison. Possess or carry dynamite or other explosives or poisonous or other stupefying substance while engaged in fishing in a boat; and
3. Possess dynamited or poisoned fish. Possess, buy or sell fish taken by use of dynamite or other explosives or poisonous or other stupefying substance.

§ 6952. Trawling, seining or netting for lobster

It shall be unlawful to fish for or take lobsters by use of an otter or beam trawl, a scallop drag or trawl, seine or net or to have in possession any lobsters, regardless of their source, on board any boat rigged for otter or beam trawling, scallop dragging or trawling, seining or netting.

1. Exceptions.

- A. No violation of this section shall occur if the lobster is immediately liberated alive in the coastal waters.
- B. This section shall not apply to any boat rigged for otter or beam trawling, scallop dragging or trawling, or seining if all nets and scallop drags are removed from the boat.
- C. This section shall not apply to any boat rigged for netting if there are no finfish taken by gill net aboard.

hydropower justifies singular treatment. The Legislature further declares that it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of waters of the State. It is the purpose of this subarticle to require a single application and permit for the construction of all hydropower projects and for the reconstruction or structural alteration of certain projects, including water storage projects. The permit application process shall be administered by the Department of Environmental Protection, except that, for hydropower projects within the jurisdiction of the Maine Land Use Regulation Commission, the commission shall administer the permit application process under this subarticle.

MAINE WATERWAY DEVELOPMENT & CONSERVATION ACT

(Title 38, Sections 630-636)

§630. Short title

This subarticle may be cited and referred to in proceedings and agreements as the "Maine Waterway Development and Conservation Act."

§631. Purposes

1. **Findings.** The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State for the following reasons.

A. Hydropower is the state's only economically feasible, large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products. Hydropower can be developed at many sites with minimal environmental impacts, especially at sites with existing dams or where current type turbines can be used.

B. Like all energy generating facilities, hydropower projects can have adverse effects, in contrast with other energy sources, they may also have positive environmental effects. For example, hydropower dams can control floods and augment downstream flow to improve fish and wildlife habitats, water quality and recreational opportunities.

C. Hydropower is presently the state's most significant indigenous resource that can be used to free our citizens from their extreme dependence on foreign oil for peaking power.

2. **Policy and purpose.** The Legislature declares that

Note: This Act provides for a single application and permit, replacing requirements for approval of hydropower projects under the following Coastal Program core laws: Land Use Regulation Law (12 MRSA 681-689); Alteration of Rivers, Streams and Brooks Law (12 MRSA 776-7780); Alteration of Coastal Wetlands Law (38 MRSA 471-478); and Site Location of Development Law (38 MRSA 481-490).

§632. Definitions

As used in this subarticle, unless the context indicates otherwise, the following terms have the following meanings.

1. **Board.** "Board" means the Board of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Regulation Commission, "board" means the Maine Land Use Regulation Commission.

2. **Department.** "Department" means the Department of Environmental Protection.

3. **Hydropower project.** "Hydropower project" means any developmental which utilizes the flow of water as a source of electrical or mechanical power or which regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower project development includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads and other appurtenant works and structures that are part of the development.

§633. Prohibition

1. **Permit required.** No person may initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways which change water levels or flows above or below the dam, without first obtaining a permit from the board.

2. **Exceptions.** This subarticle shall not apply to ac-

tivities for which, prior to the effective date of this Act, a permit or permits have been issued pursuant to any of the following laws; Land use regulation laws, Title 12, sections 681 to 688; stream alteration laws, Title 12, sections 776 to 7780; great ponds laws, sections 391 to 394; alteration of coastal wetlands laws, sections 471 to 478; site location of development laws, sections 481 to 490; and small hydroelectric generating facilities laws, sections 621 to 626.

3. Exemptions. Normal maintenance and repair of an existing and operating hydropower project shall be exempt from this subarticle, provided that:

- A. The activity does not involve any dredging or filling below the normal high-water line of any great pond, coastal wetland, river, stream or brook; and
- B. The activity does not involve any dredging or filling on the land adjacent to any great pond, coastal wetland, river, stream or brook such that any dredged spoil, fill or structure may fall or be washed into those waters.

§634. Permit requirements

1. Coordinated permit review. Permits required under the following laws shall not be required by any state agency for projects reviewed or exempted from review under this subarticle: Land use regulation laws, Title 12, sections 681 to 689; stream alteration laws, Title 12, sections 776 to 7780; great ponds laws, sections 391 to 394; alteration of coastal wetlands laws, sections 471 to 478; and site location of development laws, sections 481 to 490. Notwithstanding section 654, the board may attach reasonable conditions consistent with this Act concerning the operation of hydropower projects. The board shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

Issuance of a water quality certificate required under the United States Water Pollution Control Act, Section 401, shall be coordinated for the applicant under this subarticle by the Department of Environmental Protection. The issuance of a water quality certificate shall be mandatory in every case where the board approves an application under this subarticle. The coordination function of the department with respect to water quality certification shall not in-

clude any proceedings or substantive criteria in addition to those otherwise required by this subarticle.

2. Application. An application for a permit required by section 633 shall be made on forms provided by the board and shall be filed with the board. Public notice of the filing shall be made as required by the board.

3. Application review. Within 10 working days of receiving a completed application, the Commissioner of Environmental Protection or the Director of the Maine Land Use Regulation Commission, as appropriate, shall notify the applicant of the official date on which the application was accepted.

The commissioner or the director, as appropriate, shall circulate the application among the Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, Office of Energy Resources, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The Office of Energy Resources and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Regulation Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The department shall respond to the requests in a timely manner. The department's recommendations shall be considered by the commission in acting upon a project application.

§635. Board decision

Upon receipt of a properly completed application, the board shall either:

1. Approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, including the public interest in replacing oil with hydroelectric energy. These terms and conditions may include, but are not limited to:

- A. Establishment of a water level range for the body of water impounded by a hydropower project;
- B. Establishment of instantaneous minimum flows for the

body of water affected by a hydropower project; and

C. Provision for the construction and maintenance of fish passage facilities;

In those cases where the proposed project involves maintenance, reconstruction or structural alteration at an existing hydropower project and where the proposed project will not alter historic water levels or flows after its completion, the board may impose temporary terms and conditions of approval relating to paragraph A or paragraph B, but shall not impose permanent terms and conditions that alter historic water levels or flows;

2. Disapproval. Disapprove the proposed project, setting forth in writing the reasons for the disapproval; or

3. Hearing. Schedule a hearing on the proposed project. Any hearing held under this subsection shall follow the notice requirements and procedures for an adjudicatory hearing under Title 5, chapter 315, subchapter IV. After a hearing is held under this subsection, the board shall make findings of facts and issue an order approving or disapproving the proposed project, as provided in subsections 1 and 2.

§635-A. Time limits for processing applications

Whenever the board receives a properly completed application, the board shall make a decision as expeditiously as possible. When the proposed project lies within the jurisdiction of the Department of Environmental Protection, the Board of Environmental Protection shall make a decision in accordance with section 344, except that the commissioner may waive the requirements of section 344, only at the request of the applicant.

When the proposed project lies within the jurisdiction of the Maine Land Use Regulation Commission, decisions shall be made within 105 working days except that decisions delegated to the director shall be made within 60 working days. The director may waive the time limit requirements of this section only at the request of the applicant.

§636. Approval criteria

The board shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met:

1. Financial capability. The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the board may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

2. Safety. The applicant has made adequate provisions for protection of public safety.

3. Public benefits. The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.

4. Traffic movement. The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

5. Maine Land Use Regulation Commission. Within the jurisdiction of the Maine Land Use Regulation Commission, the project is consistent with zoning adopted by the commission.

6. Environmental mitigation. The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

7. Environmental and energy considerations. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

A. Whether the project will result in significant benefit or harm to soil stability, water quality, coastal and inland wetlands or the natural environment of any surface waters and their shorelands;

B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the board shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Atlantic Sea Run Salmon Commission;

C. Whether the project will result in significant benefit or harm to historic and archeological resources;

D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses;

E. Whether the project will result in significant flood control benefits or flood hazards; and

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace.

The board shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

MAINE RIVERS ACT

(Title 12, Section 403)

§403. Special protection for outstanding rivers

The Legislature declares that certain rivers, because of their unparalleled natural and recreational values, provide irreplaceable social and economic benefits to the people in their existing state. It is the Legislature's intent that no new dams be constructed on these river and stream segments without the specific authorization of the Legislature, and that additional development or redevelopment of dams existing on these segments, as of the date of the enactment of this section, shall be designed and executed in a manner that either enhances or does not diminish the significant resource values of these river segments identified by the 1982 Maine Rivers Study. No license or permit under Title 38, sections 630 to 636 may be issued for construction of new dams on the river and stream segments subject to this special protection without the specific authorization of the Legislature, or for additional development or redevelopment of existing dams on the river and stream segments subject to this special protection where the additional development or redevelopment diminishes the significant resource values of these river and stream segments.

Further, the Legislature finds that projects inconsistent with this policy on new dams and redevelopment of existing dams will alter the physical and chemical characteristics and designated uses of the waters of these river and stream segments. It finds that these impacts are unacceptable and constitute violations of the state's water quality standards. The Legislature directs that no project which fails to meet the requirements of this section may be certified under the United States Clean Water Act, Section 401.

For purposes of this section, outstanding river and stream segments meriting special protection shall include:

1. Allagash River. The Allagash River from Gerald Brook in Allagash up to but not including the Churchill Dam in T.10, R.12, W.E.L.S., including its tributaries the Musquacook Stream from the Allagash River to the outlet of Third Musquacook Lake in T.11, R.11, W.E.L.S.; Allagash Stream from its inlet to Chamberlain Lake to the outlet of Allagash Pond in T.9, R.15, W.E.L.S.; and Chemquassabanticook

Stream from its inlet into Long Lake to the outlet of Chemquassabanticook Lake, excluding Round Pond in T.13, R.12, W.E.L.S.; Harvey Pond, Long Lake, Umsakis Lake, Musquacook Lakes (1-2), Little Round Pond in T.8, R.13, W.E.L.S.; Allagash Lake and Clayton Lake;

2. Aroostook River. The Aroostook River from and including the Sheridan Dam in Ashland to Millinocket Stream, including its tributaries Millinocket Stream from the Aroostook River to the outlet of Millinocket Lake; Mansungan Stream from the Aroostook River to the outlet of Little Mansungan Lake; St. Croix Stream from the Aroostook River to Hall Brook in T.9, R.5, W.E.L.S.; and the Big Machias River from the Aroostook River to the outlet of Big Machias Lake, excluding Round Pond in T.7, R.9, W.E.L.S.;
3. Dead River. The Dead River from the Kennebec River to the upstream limit of Big Eddy;
4. Dennys River. The Dennys River from Hinckley Point in Dennysville to the outlet of Meddybemps Lake;
5. East Machias River. The East Machias River, including the Maine River, from the Route 191 Mill Memorial Bridge in East Machias to the outlet of Pocomooshine Lake, excluding Hadley Lake, Second Lake, Round Lake, Crawford Lake, Lower Mud Lake and Upper Mud Lake;
6. Fish River. The Fish River from its inlet into St. Froid Lake in T.14, R. 7, W.E.L.S. to the outlet of Mud Pond in T.13, R. 8, W.E.L.S., excluding Portage Lake, Round Pond and Fish River Lake.
7. Kennebec River. The Kennebec River from Bay Point in Georgetown to the Father Curran Bridge in Augusta and from the confluence of the Dead River with the Kennebec River up to, but not including, the Harris Dam in Indian Stream Township;
8. Machias River. The Machias River, including Fourth and Fifth Lake Streams, from Fort O'Brien in Machias to the outlet of Fifth Machias Lake, including its tributaries the West Branch Machias River from the Machias River to the outlet of Lower Sabao Lake; Old Stream from the Machias River to the outlet of First Lake; and Mopang Stream from the Machias River to the outlet of Mopang Second Lake, excluding Machias Lakes (1-4), Lower Pond and Mopang First Lake;
9. Mattawamkeag River. The Mattawamkeag River from the

Penobscot River to the Mattawamkeag and Kingman Township townline.

10. Moose River. The Moose River from its inlet into Attean Pond to its confluence with Number One Brook in Beattie Township;

11. Narraguagus River. The Narraguagus River from the Route 1 bridge in Cherryfield to the outlet of Eagle Lake; excluding Bedington Lake and Deer Lake;

12. Penobscot River. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs up to, but not including, the Veazie Dam, including its tributaries the West Branch of the Penobscot from its inlet into Ambajejus Lake to the western Boundary of T.3, R.10, and from its inlet into Chesuncook Lake up to, but not including, the dam at Seboomook Lake; the East Branch Penobscot River from the Penobscot River up to, but not including, the dam at the outlet of Grand Lake Matagamon; the Wassataquoik Stream from the East Branch of the Penobscot River to Annis Brook in T.4, R.9, W.E.L.S.; the Webster Brook from its inlet into Grand Lake Matagamon up to, but not including, Telos Dam in T.6, R.11, W.E.L.S.; the Seboeis River from the East Branch of the Penobscot River to the outlet of Showshoe Lake; and the Sawtell Brook from the Seboeis River up to, but not including, the dam at the outlet of Sewartelle Deadwater, excluding Passanagnamet Lake, Webster Lake, White Horse Lake and Snowshoe Lake;

13. Pleasant River. The Pleasant River from Seavey Point in Addison to the outlet of Pleasant River Lake;

14. Rapid River. The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;

15. Saco River. The Saco River from the Little Ossipee River to the New Hampshire border;

16. St. John River. The St. John River from one mile above the foot of Big Rapids in Allagash to the Baker Branch, including its tributaries the Big Black River from the St. John River to the Canadian border; the Northwest Branch from the St. John River to the outlet of Beaver Pond in T.12, R.17, W.E.L.S.; the Southwest Branch from the Baker Branch to 5 miles downstream of the Canadian border; and the Baker Branch from the St. John River to 1.5 miles below Baker Lake;

17. Sheepscot River. The Sheepscot River from the Route 1 bridge in Wiscasset to Hallowell Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributaries the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China; and

18. West Branch Pleasant River. The West Branch Pleasant River from the East Branch to the outlet of Fourth West Branch Pond in Shawtown Township, excluding Silver Lake and West Branch Ponds (1-3).

SUBMERGED & INTERTIDAL LANDS

(Title 12, Section 558-A)

§558-A. Submerged and intertidal lands owned by the State

1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Occupying" refers to the total area of the structure or alteration itself to the extent that the area within its boundaries is directly upon or over the state-owned lands.

B. "Permanent" means occupying submerged and intertidal lands owned by the State during 7 or more months during any one calendar year.

2. Leases. The director may lease, for a term of years not exceeding 30 and with conditions he deems reasonable, the right to dredge, fill or erect permanent causeways, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures:

(1) The director shall charge the lessee a base rent that practically approximates the fair market rental value of the land;

(2) The director may adjust the base rent, decreasing it for desirable uses or increasing it for undesirable ones. In determining the desirability of uses, the director shall consider the extent to which the use does not impair the future use of the submerged or intertidal land for fishing, fowling or navigation, needs to be located on the submerged land, and exploits natural renewable resources of the water;

(3) The director may revalue rents every 5 years. For leases entered into before and after July 1, 1984, rents shall not exceed 4¢ per square foot increased by 10% cumulatively for each year that has elapsed since July 1, 1984. Further adjusted by the cumulative increase in the United States Consumer Price Index. Notwithstanding this limit, if an appraisal of the value of the land under a new or existing lease is performed, the director may charge a rent based on subparagraphs (1) and (2); and

(4) The director may also lease, for a period of not more than 5 years, a buffer zone of not more than 30 feet in width around a permanent structure located on submerged or intertidal land, provided the lease is necessary to preserve the integrity and safety of the structure and the Commissioner of Marine Resources consents to that lease.

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop such terms and conditions as he deems reasonable.

C. The director shall charge an administrative fee of \$25 for each lease in addition to any rent.

D. The director may establish a reasonable minimum rent to which any lease is subject, but it shall not exceed \$75 per year.

3. Easements. The director may grant, upon such terms and conditions as he deems reasonable, but without valuable consideration, except for a one-time administrative fee of \$15, assignable easements for a term of years not exceeding 30 for the use of submerged and intertidal lands for the purposes permitted in subsection 2, provided that that use:

A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Sec-

tion 501, (c) (3);

B. Occupies a total of not more than 500 square feet of state-owned land for any lawful purpose;

C. Occupies a total of not more than 2,000 square feet of state-owned land for the exclusive purpose of landing or processing shellfish, finfish or other natural products of the sea or for other activities directly related to the purpose of landing or processing shellfish, finfish or natural sea products, including fueling, loading or selling these products; or

D. Is for harbor improvement by the Federal Government.

4. Adjustment of terms. The director may adjust from time to time, consistent with the provision of this section, conditions applicable to any leasehold or easement entered into under this section in any parcel of state-owned submerged or intertidal land rent shall not be charged for leases entered into prior to July 1, 1984, if the actual use of the leased land is eligible for an easement under subsection 3.

5. Review of uses. The director shall review from time to time, in the case of easements, the purposes for which the land conveyed has actually been used, and in the event any such purpose is found to be inconsistent with the criteria set forth in subsection 3 for eligibility for an easement, the easement shall terminate and the director may enter into a leasehold agreement with the holder of the easement in accordance with subsection 2.

6. Constructive easements. In the event the director fails to take final action on an application for an easement for a project eligible for such easement under subsection 3 within 30 days after receipt of the application, an easement for a term of 30 years on the state-owned land directly underlying the project shall be deemed to have been granted. The owners of all structures actually upon submerged and intertidal lands on October 1, 1975, shall be deemed to have been granted such an easement.

7. Consultation. The director shall consult with the Commissioner of Conservation, Commissioner of Marine Resources, Commissioner of Inland Fisheries and Wildlife and such other agencies or organizations as he deems appropriate in developing and implementing terms, conditions and consideration for conveyances under this section. Notwithstanding section 551, the director may determine to make proprietary conveyances under this section solely on the basis of the issuance of environmental or regulatory permits by other appropriate state agencies.

8. Rules. The director shall promulgate whatever rules are necessary and appropriate to administer this section.

dial care, surveillance and monitoring are necessary at the site, following termination of licensed operation.

NUCLEAR WASTE ACTIVITY

(Title 38, Sections 1451-1480-A)

§1451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Area studies**, for high-level radioactive waste, means the study of areas with potentially acceptable sites using available geophysical, geologic, hydrologic, geochemical, reconnaissance and field work, including geophysical testing, preliminary borings and excavation as necessary to assess whether site characterization should be undertaken for any sites within the area. Area studies also include socioeconomic and environmental studies and preparation of any environmental assessment relating to the suitability of the site for nominal site characterization.

2. **By-product material.** "By-product material" means:

- A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing nuclear material; and
 - B. The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
3. **Closure or site closure.** "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custo-

dial care, surveillance and monitoring are necessary at the site, following termination of licensed operation.

4. **Decommissioning a nuclear power plant**, means the series of activities undertaken, beginning at the time of closing of a nuclear power plant, to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

5. **Environmental impact statement.** "Environmental impact statement," means any document prepared pursuant to or in compliance with the requirements of the United States National Environmental Policy Act of 1969, Section 102(2)(c), 83 Stat. 852, 1981.

6. **High-level radioactive waste.** "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

7. **High-level radioactive waste disposal.** "High-level radioactive waste disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel or other highly radioactive material with no foreseeable intent of recovery, whether or not that emplacement permits the recovery of that waste.

8. **High-level radioactive waste repository or repository.** "High-level radioactive waste repository" or "repository" means any system licensed by the United States Nuclear Regulatory Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not the system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in the system. This term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

9. High-level radioactive waste storage. "High-level radioactive waste storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover that waste or fuel for subsequent use, processing or disposal.
10. License. "License" means a federal or state license, issued to a named person upon application to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.
11. Low-level radioactive waste. "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or by-product material, as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, Section 11(e)(2), and that the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.
12. Low-level radioactive waste disposal facility. "Low-level radioactive waste disposal facility" means a facility for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains.
13. Low-level radioactive waste generator. "Low-level radioactive waste generator" means a person who produces or processes low-level radioactive waste, whether or not that waste is shipped off site.
14. Low-level radioactive waste licensee or low-level waste licensee. "Low-level radioactive waste licensee" or "low-level waste licensee" means any person licensed by the State or Federal Government to generate, treat, store or dispose of low-level radioactive waste.
15. Low-level radioactive waste storage facility. "Low-level radioactive waste storage facility" means any facility for storage of low-level radioactive waste, except for temporary on-site storage prior to disposal.
16. Radioactive material. "Radioactive material" means any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.
17. Site characterization. "Site characterization," for high-level radioactive waste, means:

- A. Siting research facilities with respect to a test and evaluation facility at a candidate site; and
- B. Activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in-situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.
18. Source material. "Source material" means:
- A. Uranium or thorium, or any combination thereof, in any physical or chemical form; or
- B. Ores which contain by weight 1/20th of 1%, 0.05% or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material.
19. Source material mill tailings. "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface waste resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.
20. Special nuclear material. "Special nuclear material" means:
- A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or
- B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material.
21. Spent nuclear fuel. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.
22. Transuranic waste. "Transuranic waste" means ra-

dioactive waste containing alpha-emitting transuranic elements with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

§1452. Consent of Legislature for federal radioactive waste storage facilities

Notwithstanding any other provision of law, this State does not consent to the acquisition by the Federal Government, by purchase, condemnation, lease, easement or by any other means, of any land, building or other structure, above or below ground, in or under the waters of the State for use in storing, depositing or treating high-level or low-level radioactive waste materials, except by prior affirmative vote of the Legislature.

HIGH-LEVEL RADIOACTIVE WASTE

§1461. Intent

It is the intent of the Legislature to cooperate fully with the Federal Government to manage safely and effectively high-level radioactive waste, provided that the Federal Government financially assists the State in this participation. It is further the intent of the Legislature to participate to the maximum extent in the federal process for siting high-level radioactive waste repositories.

§1462. Limitation

No state department or agency may accept any funds related to siting high-level radioactive waste repositories, nor may any state agency participate in these efforts, unless the applicable requirements of this subchapter have been fulfilled.

§1463. Area studies

1. Plan. Prior to initiation of area studies, the commissioner shall submit plan for these studies to the Legislature for approval, including, by reference, any federal plan for those studies. This plan shall include procedures for the establishment of a state review group to review the

conduct of area studies and report the findings of those studies. This review group shall include representatives of the scientific community, the Legislature and the general public. The review group may be established and may conduct its activities before other elements of the plan are approved.

2. Exploration. No person may explore geological formations within this State for the purpose of siting a high-level radioactive waste repository without a written permit from the State Geologist. The State Geologist shall approve requests for these exploration permits, if the proposed activity is consistent with the plan required by section 1 and with the General Guidelines for Recommendation of Sites for Nuclear Waste Repositories promulgated in final form by the United States Department of Energy, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425.

3. Public hearings. No plan for area studies may be approved unless it contains provision for public hearings in the State within 12 months after commencement of the studies to receive comments on:

- A. The technical feasibility of the proposed waste management technology;
- B. The environmental impact of a waste repository in the area of study;
- C. The social impact of a waste repository in the area of study;
- D. The economic impact of a waste repository in the area of study;
- E. Whether the proposed facility will be subject to section 413, waste discharge licenses; section 483, site location of development; section 520, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department that may be applicable;
- F. Conformance of the plan with the federal guidelines cited in subsection 2; and
- G. A reasonable comparative evaluation of the suitability of sites in the study area compared with sites in other areas.

4. Approval of plan required. No agent of the State may participate in area studies after the end of the session of the Legislature at which the Plan was submitted, until the Legislature has approved a plan for these studies.

No person may conduct borings or excavations relating to area studies, unless the Legislature has approved a plan for the studies, including those borings or excavations.

5. Reports. The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any area studies and, immediately upon completion of those studies, shall review their findings and report them, together with his comments to the Governor and the Legislature.

§1464. Site characterization and selection

1. Limitation. No agent of the State may participate in site characterization or selection efforts, unless the Federal Government agrees that the site characterization or selection process includes:

A. Compliance with the United States National Environmental Policy Act of 1969, Public Law 91-190, including preparation of a specific environmental impact statement; and

B. Compliance with all applicable state and local laws.

2. Legislative findings. No agent of the State may participate in site selection or construction of a high-level radioactive waste repository, unless the Legislature finds that all of the issues in section 1463, subsection 3, have been adequately addressed.

No person may excavate any exploratory shaft for site characterization, selection or construction, unless the Legislature has approved that activity.

3. Reports. The commissioner shall keep the Governor and the Legislature fully and currently informed about the conduct of any site characterization and, immediately upon completion of that effort, shall review the findings and report them, together with his comments to the Governor and the Legislature.

§1465. Notice of disapproval

1. Departmental review and report. In the event the Secretary of the United States Department of Energy notifies the State, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425, Section 1.14(a) or any other provision of law, that the Secretary has decided to recommend to the President of the United States approval of a site within the State for a high-level radioactive waste repository, the Department of Environmental Protection shall review that recommendation with special attention to the issues identified in section 1463, subsection 3. In connection with this review, the department shall hold a public hearing in the vicinity of the proposed site and such other public hearings as may be necessary to obtain adequate public input. Any person who resides within the State shall be entitled to be heard. The department shall report its findings to the Governor and the Legislature within 30 days after the date of the notice from the United States Department of Energy.

2. Resolve of disapproval. In the event the Secretary of the United States Department of Energy submits to the President a recommendation that the President approve a site within the State for application for development of a repository, in accordance with the United States Nuclear Waste Policy Act of 1982, Public Law 97-425, the Governor and the Legislature shall review that recommendation and consider a resolve with text as follows:

"The State of Maine hereby disapproves the site at _____ for a high-level radioactive waste repository."

The blank space shall be filled with the name of the geographic location of the proposed site of the repository. The resolve shall be referred to the joint standing committee of the Legislature having jurisdiction over natural resources for public hearing and committee action, and the committee shall make its report within 30 days of the Secretary's recommendation. If the Legislature is not in session when the committee report is filed, a special session shall be called in a timely fashion to consider the resolve. Final action by the Legislature shall be taken within 45 days of the Secretary's recommendation.

3. Notification. If a resolve of disapproval is enacted by the Legislature and approved by the Governor, then the Governor shall immediately transmit notification of that disapproval to the President and the Congress.

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§1466. Other facilities

Except for on-site storage of spent fuel from a nuclear power plant, any facility for storage or processing of high-level radioactive waste which is not a repository is subject to the requirements in this section. Except for storage in existing licensed capacity, on-site storage of spent fuel from a nuclear power plant shall be subject to subsections 1 and 2.

1. Notification. Any person planning to construct a facility covered by this section shall notify the Department of Environmental Protection. The department shall, by rule, specify the form, content and timing of that notice.
2. Departmental review. Upon receipt of notice under subsection 1, the department shall review the proposed facility, as closely as possible in accordance with section 1463 and report its findings and recommendations within 90 days to the Governor and the Legislature.

3. Legislative approval of facilities required. No high-level radioactive waste disposal or storage facility covered by this section may be constructed or operated in the State, unless the Legislature has expressly approved the construction or operation of that facility. This approval does not replace any other license or permit that may be required by law or rule.

Each low-level radioactive waste generator shall annually report, by March 31st, the volume and radioactivity of low-level waste generated and the volume and radioactivity of low-level waste shipped to commercial disposal facilities. This report shall be submitted to the commissioner, and shall include information on the specific radioactive materials handled.

§1473. Geological characterization

The State Geologist shall advise the Governor and the Legislature on the suitability of areas of the State for low-level waste disposal. In determining suitability, the State Geologist shall consider final rules for facility siting under 10 Code of Federal Regulations, Part 61, and other rules, as appropriate.

§1474. Regional compacts

The Governor may negotiate on behalf of the State, with other states and the Federal Government with respect to the siting, licensing, operation and use of low-level waste disposal facilities within and outside this State. The Governor may recommend regional compacts with states that have identified their annual low-level radioactive waste generation, and identified areas within their state that meet preliminary site criteria.

LOW-LEVEL RADIOACTIVE WASTE

§1471. Purpose

In accordance with the United States Low-level Radioactive Waste Policy Act of 1980, Public Law 96-573, the Legislature accepts its responsibility for providing for the capacity for the disposal of low-level radioactive waste generated within this State. It is the purpose of this chapter to establish a program for the safe management of low-level radioactive waste, and to provide capacity for its disposal either within this State or in regional facilities.

§1472. Reporting

1. Establishment. The Low-level Waste Siting Commission, established by Title 5, section 12004, subsection 10, shall hereafter be referred to as the "Commission".

§1476. Low-level Waste Siting Commission

2. Membership; appointment. The commission shall consist of 11 members, who shall be appointed as follows. The Commissioners of Environmental Protection and Human Services, and the State Geologist, or their designees, shall be members of the commission. The President of the Senate shall appoint 3 Senators, 2 from the majority party and one from the minority party and one person from an organization that is a low-level waste licensee. The Speaker of the House of Representatives shall appoint 3 Representatives, 2 from the majority party and one from the minority party and one person from an organization that is a low-level waste licensee. The members shall be appointed in a timely manner. The Chairman of the Legislative Council shall call the first meeting of the commission, and at this meeting the commission shall elect a chairman and a vice-chairman from its membership.

3. Duties. The duties of the commission are to:

- A. Study the management, transportation and disposal of low-level waste generated in or near this State;
 - B. Evaluate current radioactive waste classifications and propose alternatives, if appropriate;
 - C. Evaluate methods and criteria for siting low-level waste disposal facilities; and
 - D. Assist the Governor in regional efforts to manage low-level waste.
4. Reports. The commission shall regularly report on its progress to the Governor and the Legislature.
5. Compensation. Members, except state employees, shall be compensated according to the provisions of Title 5, chapter 379.
6. Assistance. The Commissioner of Environmental Protection shall assist the commission in the conduct of its business.

§ 1477. Low-level Waste Siting Fund

1. Establishment. There is established the Low-level Waste Siting Fund to be used to carry out the purpose of this subchapter. This fund shall be administered by the Commissioner of Environmental Protection in accordance with established budgetary procedures. The commissioner may accept state, federal and private funds to be used to assure safe

and effective low-level waste management, and to develop capacity to safely dispose of these wastes.

2. Service fee. A service fee of \$10 per cubic foot shall be levied on all low-level radioactive waste generated in this State and shipped to commercial disposal facilities. The revenue from this service fee shall be credited to the fund established in subsection 1 and used to carry out the purposes of this subchapter. This service fee shall be levied only on low-level radioactive waste generated and shipped on or before December 31, 1985.

3. Allocation. The expenses for the administration of the commission in carrying out the duties as set forth in this subchapter shall be paid from such amounts as the Legislature may allocate from the revenues in the Low-level Waste Siting Fund. These amounts shall become available in accordance with Title 5, chapters 141 to 155.

4. Balance carried forward. Any unexpended balance shall not lapse, but shall be carried forward to the same fund for the next fiscal year and shall be available for the purposes authorized by this subchapter.

5. Report to Legislature. The commissioner shall report annually to the Legislature the revenues and expenditures under this subchapter. The commissioner shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over natural resources on the income to and expenditures from the Low-level Waste Siting Fund and on the budget for the coming year. That report shall include total fees received from each generator, and line item detail on expenditures, including in-state travel and out-of-state travel, printing, mailing and hearings; personnel; consultant services; general operating expenses, supplies and overhead, for both the commission and the department.

§ 1478. Departmental review of low-level radioactive waste facilities

1. Notice. Any person intending to construct or operate a low-level radioactive waste storage or disposal facility shall file a preliminary notice with the department and the municipality in accordance with section 483, subsection 1 and also notify the board of his intent in accordance with section 483, subsection 2.

2. Hearings. The board shall hold hearings on the proposed facility in accordance with section 484. Subject to

the requirements of Title 5, section 9057 any person who resides within the State is entitled to be heard. The hearings shall as a minimum address the following issues:

- A. The technical feasibility of the proposed waste disposal or storage facility;
- B. The environmental impact of the proposed waste disposal or storage facility on the surrounding area;
- C. The social impact of the proposed waste disposal or storage facility on the surrounding area; and
- D. The economic impact of the proposed waste disposal or storage facility on the surrounding area.

Whether the proposed facility will satisfy any requirements under: Section 413, waste discharge licenses; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department that may be applicable.

3. Municipal participation. The municipality in which the proposed facility would be located may participate in the departmental site review using procedures conformed to the procedures for municipal participation in siting or hazardous waste facilities under section 1305-A, subsection 2.

4. Findings; recommendations. Notwithstanding any requirement of chapter 3, subchapter I, Article 6, within 90 days after adjournment of the hearings, the board shall make findings of fact and conclusions derived from those findings. Based upon those findings and conclusions, the board shall issue in order denying permission for construction and operation of the facility on grounds stated in section 484, or shall recommend to the Legislature granting that permission, subject to any terms and conditions deemed appropriate. Any favorable recommendation shall be transmitted to the Legislature, together with the supporting findings and conclusions, for action under section 1479.

5. Judicial review. Either action of the board under subsection 4 shall constitute final agency action, reviewable in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

§1479. Legislative approval of facilities required

No low-level radioactive waste disposal or storage fa-

cility may be established in the State, unless the Legislature has, by Private and Special Act, approved the establishment of that facility pursuant to the provisions of this subchapter. The Legislature shall act expeditiously on any recommendation of the board under section 1478, but shall not act until after the conclusion of any judicial review of the recommendation and any resulting administrative proceedings.

Approval under this subchapter constitutes approval under the site location of development laws, but does not replace any other license required by law.

§1480. Applicability of regulations

All low-level radioactive waste storage facilities, whether privately or publicly owned or operated, shall be subject to regulation in accordance with this chapter.

§1480-A. Joint hearings; intervention

The board may hold joint hearings with the United States Nuclear Regulatory Commission and intervene in any federal licensing proceeding to carry out the purpose of this chapter.

HAZARDOUS MATTER CONTROL

(Title 13, Sections 1317-1319-A)

§ 1317. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Discharge. "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, dispensing, emptying or dumping onto the land or into the water or ambient air.
2. Hazardous matter. "Hazardous matter" means substances identified by the board under section 1319 that present a present or potential danger to the people of the State or to its natural environment when deposited on land or discharged on or into waters of the State or ambient air.
3. Remove or removal. "Remove" or "removal" means the mitigation of the danger created by hazardous matter by either:
 - A. Treatment or cleanup of a discharge of hazardous matter; or
 - B. Any action necessary to prevent or minimize danger from a discharge or threatened discharge.

4. Responsible party. "Responsible party" means the person having care, custody, possession or control of hazardous matter.

§ 1317-A. Discharge prohibited

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the state's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law.

§ 1318. Mitigation of penalties

1. Reporting. The immediate reporting of a discharge or threatened discharge by the responsible party or by the person causing the discharge may be considered in mitigation of any criminal or civil penalties assessed under this subchapter.
2. Removal. If the responsible party or person causing the discharge immediately removes the discharge in accordance with the rules and orders of the board, he shall not be subject to criminal or civil penalties under this subchapter.

§ 1318-A. Recovery by the State for expenditures for removal of discharges

1. Responsible party. The responsible party or the person causing the discharge is liable for all acts and omissions of its servants and agents which are committed within the course and scope of their employment.
2. State to recover for expenditures for removal. Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State for all costs incurred, including personnel costs, in removing the discharge. Funds recovered under this section shall be deposited to the account from which they were expended. Requests for reimbursement, if not paid within 30 days of demand, shall be turned over to the Attorney General for collection.

In any suit to enforce claims of the State under this section, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing, permitting, responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge and that the discharge occurred while the hazardous matter was in the custody or control of the person causing, permitting or responsible for the discharge.

§ 1318-B. Procedures for removal of discharges of hazardous matter

1. Reporting. The responsible party or the person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Department of Environmental Protection and the public safety agency of the municipality in which the discharge takes place.

2. Preservation of public order. The local public safety agency shall exercise authority for preservation of pub-

lic order and safety and shall coordinate the response to the spill. The Department of Public Safety shall exercise this authority in those areas of the State without a local public safety agency, or in any situation in which a local public safety agency requests assistance from the Department of Public Safety.

3. Department of Environmental Protection to direct removal. The Department of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter which involves removal.

A. The responsible party or the person causing the discharge shall immediately undertake removal of the discharge.

B. The department may undertake the removal of the discharge and may retain agents and make contracts for this purpose.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall be removed by or under the direction of the department.

§ 1319. Powers of the board

1. Identification of hazardous matter.

- A. Any substance which has been designated as hazardous by the United States Environmental Protection Agency in proposed or final regulations under the United States Clean Water Act, Section 311, Public Law 92-500, may be identified by rule as hazardous matter by the board.
- B. Any substance which has not been so designated by the United States Environmental Protection Agency may be identified by rule as hazardous matter by the board.
- C. Rules adopted under Paragraph B shall be submitted to the Joint Standing Committee on Energy and Natural Resources for review. These rules shall become effective after the next regular session of the Legislature only if approved by Joint Resolution.

2. Rules. The board shall have authority to adopt rules in order to:

- A. Prescribe procedures for reporting discharges prohibited by this subchapter;
- B. Prescribe procedures, methods, means and equipment to be used in the removal of discharges of hazardous matter; and
- C. Exempt type of methods of discharges of hazardous matter from the requirements of this subchapter that the board determines do not present danger, imminent, present or delayed, to the people of the State or to its natural environment.

§ 1319-A. Duties of the commissioner

1. Facilities. The commissioner may undertake studies and evaluations necessary to develop suitable waste facilities.
2. Training. The commissioner may train state and local personnel to remove discharges of hazardous matter. Insofar as practical, the commissioner shall rely on existing sources to deliver this training.

